

REMARKS

The present invention is a card for removing a tick or blood sucking insect which is bitten into or bored down into the skin of a person or animal. The card in accordance with a preferred embodiment comprises a slit 36, 50 or 54 for use in removing the tick or insect. The card may be of a size corresponding to a credit card for keeping in a wallet, pocket or bag. The card is relatively stiff for permitting removal of the tick or the blood sucking insect and includes a corner with the slit for removing the tick or the blood sucking insect. In accordance with the preferred embodiment, the card is a credit card with corner areas, a length of about 85 mm, a width of about 54 mm and thickness of less than 4 mm and one of the corner areas containing a slit or means for removing a tick or blood sucking insect. See paragraph [0016] of the substitute specification.

The Examiner continues to reject the claims based upon anticipation. As the Examiner is aware, a rejection on grounds of anticipation requires that each limitation of the claims must be literally present or inherently present in the reference in order to be an anticipation.

In the final rejection the Examiner rejected claims 5-7 and 14-20 under 35 U.S.C. §102 as being anticipated by United States Patent 5,645,500 (Borden). In the Advisory Action of July 19, 2007 responding to the July 3, 2007 Amendment pursuant to 37 CFR § 1.116 the Examiner's reasoned as follows:

Continuation of 11. does NOT place the application in condition for allowance because: each and every limitation of the claims are present in the patent to Borden inasmuch as is claimed. Applicant takes issue with the interpretation of Borden disclosing a card being of size corresponding to a credit card. It is noted that only claim 5 recites this limitation. Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d

1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also in re Zietz, 893 F.2d 319, 321-22, 13 USPQ2d, 1320, 1322 (Fed. Cir. 1989), §MPEP 2106 (II)(c). There is noting in the language in question that requires the card be exactly the dimensions of 3.346 inches by 2.216 inches in order to meet the claimed recitation of corresponding to a credit card. The present specification states the card is disclosed as being about 85mm in length and about 54mm in width where it is not clear what about these parameters entails. Dictionary.com defines about as being near or close. In this capacity 3 inches in length is not considered by Applicant to be about 3.346 inches, however the basis of this comparison is not clear. While the finger projection 16 dimensions are subtracted from the overall length by Applicant to determine the card length, the card length of Borden is that dimension that includes the legs 14 and 16. The same analogy applies for the width of the card of Borden being 1.75 inches that is about 2.216 inches. There is nothing in the present specification indicating that card of 3 inches by 1.75 inches can not be interpreted as a size corresponding to a credit card. Furthermore, corresponding, in its broadest definition is defined by dictionary.com as being similar, having a likeness or resemblance. Therefore, it is submitted that the dimensions disclosed by Borden has a likeness or resemblance of a credit card inasmuch as is claimed and disclosed.

Regarding the thickness of the card 10 of Borden, Applicant appears to argue the angle of leg 14 adds to the thickness due to an upward angle of less than 45 degrees. However, as shown in figure 2 the thickness of the tool 10 appears substantially the same throughout the tool. While the thickness of the tool is not disclosed it is shown in figure 2 to be relatively thin compared to its length and considered to resemble a credit card.

It is acknowledged claim 14 recites a sixth paragraph, section 112 limitation and the function of the card must be given weight. It is not agreed the Examiner can not point to anything explicit or inherent in Borden that suggests a card for removal of ticks or other insects. As noted in the final rejection, the tool of Borden includes a slit defined by cavity 60 and beveled arch 30 defines an abutment surface that one can manifestly use as a surface to remove a tick or other blood sucking insect by pushing the closed end of the cavity against the tick or blood sucking insect. The argument that the structures 24, 30, 48, 60 and 70 are not suitable for the removing of ticks or other blood sucking insects remains lost in the claims. Nothing is defined in the claims setting forth the parameters of the slit or outer end of the flexible finger that is for removing the tick. In view of the foregoing it is submitted the claimed subject matter is anticipated by Borden.

These grounds of rejection and the Examiner's comments in the Advisory Action are responded to as follows.

It is noted that the Examiner does acknowledge that claim 5 recites the limitation of a credit card and therefore claims 5-13 are limited to a configuration of a credit card. Therefore, the Examiner's position that Borden anticipates claims 5-13 must be measured with those claims being limited to a configuration of a credit card as stated by the Examiner. In this regard the Examiner reasons that "[t]here is nothing in the language in question that the card be exactly the dimensions of 3.346 inches by 2.216 inches in order to meet the claimed recitation of corresponding to a credit card.

A person of ordinary skill in the art would not consider Borden's golf tool to correspond to a configuration of a credit card and therefore there is no anticipation. Moreover, claim 5 recites "the card being of a size corresponding to a credit card". This limitation, given its broadest reasonable interpretation, must be viewed by a person of ordinary skill in the art to embrace that which is understood to be about the standard length and width dimensions of a credit card which are disclosed in the specification. The Examiner does not dispute in the record the length and width dimensions as disclosed are those of a credit card. Accordingly, it is submitted that a person of ordinary skill in the art would not consider Borden's golf tool to correspond to a credit card including dimensions of length of about 3.346 inches and a width of 2.216 inches.

Moreover, it is submitted that Borden's golf tool, as illustrated in Figure 2, has legs 14 and 16 and a tee indentation 40 which do not correspond to "a size corresponding to a credit card" given the dimensions described in the specification of a credit card which are not disputed by the Examiner.

Moreover, the Examiner's states regarding claim 14 that the "means for removing a tick or a blood sucking insect" must be given weight. The Examiner can not

point to any disclosure as understood by a person of ordinary skill in the art or any general knowledge of how any portion of Borden would be understood by a person of ordinary skill in the art to correspond to “means for removing a tick or a blood sucking insect”. It is noted that the Examiner seems to be relying upon the “spike cleaner” 30 and “pop top tab grabber” 60 as being suitable for removing a tick or blood sucking insect. However, the function of removing a tick or blood sucking insect is not explicitly or inherently disclosed in the description of spike cleaner 30 or the pop top tab grabber 60 of Borden. A person of ordinary skill in the art would not consider the disclosed function of cleaning spikes or grabbing the top of soda cans to explicitly or inherently suggest the removing of ticks or blood sucking insects.

Newly submitted claims 25 and 26 respectively limit claims 5 and 25 by reciting that “the card comprises a credit card with corner areas of a length of about 85 mm, a width of about 54 mm, and a thickness of less than 4 mm between opposed parallel faces each covering all of a surface area of the card with each face being in a single plane, two pairs of straight sides and the corners being connected with the straight sides with each pair of straight sides being parallel to each other and one of the corners containing the slit or means for removing a tick or blood sucking insect. This subject matter has no counterpart in Borden for the reasons that Borden does not disclose and his golf tool would not be understood to be configured as a credit card, does not disclose a length of about 85 mm, a width of about 54 mm and a thickness of less than 4 mm, opposed parallel faces covering all of a surface area of the card with each face being in a single plane, two pairs of straight sides and the corners being connected with straight sides with each pair of straight sides being parallel to each other and one of the corners containing the slit or means for removing a tick or blood sucking insect. A person of ordinary skill in the art would not consider Borden to teach

this subject matter, with any conclusion of it being suggested by Borden being hindsight.

Applicant submits a payment of \$50.00 to cover the addition of two additional dependent claims.

In view of the foregoing amendments and remarks it is submitted that each of the claims in the application is in condition for allowance.

To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. §1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (142.43482X00) and please credit any excess fees to such Deposit Account.

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP

/Donald E. Stout/

Donald E. Stout
Registration No. 26,422
(703) 312-6600

Attachments

DES:kmh/mlh